

A Better Life—A Safer Community Helping Inmates Access Federal Benefits

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INTRODUCTION

This paper discusses access to federal benefit programs for adults with serious mental illnesses and juveniles with serious mental or emotional disorders leaving jail, prison, juvenile detention or other correctional institutions (hereafter the term ‘serious mental disorders’ is used for both groups). It is based in part on material presented at a symposium during the 2002 Conference on Expanding Access to Community-Based Services for People with Co-Occurring Disorders in Contact with the Criminal Justice System, sponsored by the National GAINS Center. Presenters there, listed on page 17, had expertise in federal benefit-program rules and experience in the correctional system (including as a jail administrator) and with the needs of people who are homeless. The report also includes information collected by the Bazelon Center on state and local initiatives to deal with this issue.

PROBLEM

Growing numbers of people with serious mental disorders are in jails or prison. Many cycle through corrections facilities repeatedly, costing both criminal justice systems and communities significant resources and resulting in great pain to themselves and their families. Access to mental health and substance abuse services, food stamps and the income support that can pay for housing and other necessities is generally available to these individuals through federal entitlement programs. Yet many jail and prison inmates with serious mental disorders either have lost or never had these essential federal entitlements.

Individuals released from correctional facilities without benefits face many of the same problems that led to their original arrest. Without income support,

- Nationally, nearly 2 million new jail admissions each year are of adults with mental illnesses—35,000 a week.¹
- More than 16% of jail inmates have a mental illness, according to the U.S. Department of Justice.²
- Seventy percent of adult jail inmates with mental illnesses are there for nonviolent offenses.³
- Offenders with mental illnesses are at higher risk of returning to prison if psychiatric and social needs are not met.⁴
- Youth in the juvenile justice system have higher rates of mental health disorders than youth in the general population.⁵
- Eighty percent or more of the juvenile justice population have mental health disorders.⁶
- One in five youth in the juvenile justice system has a serious mental health problem.⁷



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The Bazelon Center is the leading national legal advocate for adults and children with mental disabilities. Its mission is to protect these individuals' rights to exercise meaningful life choices and to enjoy the social, recreational, educational, economic, political and cultural benefits of community life.

The staff uses a coordinated approach of litigation, policy analysis, coalition-building, public information and technical support for local advocates to end the segregation of children and adults with mental disabilities and assure them of the opportunity to access needed services and supports.

BAZELON CENTER FOR MENTAL HEALTH LAW
1101 15th Street NW, # 1212
Washington DC 20005
(202) 467-5730
www.bazelon.org

either through federal or state programs or from employment, adults will not be able to access housing and will have no resources to meet critical needs. Many will then become homeless.

Once homeless, individuals with serious mental disorders are particularly at risk of being victimized or arrested. Often they are not accepted at shelters, or are asked to leave following an incident. Without access to mental health services—in part the result of not having Medicaid coverage—the psychiatric symptoms of individuals with serious mental disorders may worsen and they may fail to respond appropriately when approached by a law enforcement officer. Their homelessness increases the likelihood of such approaches. If they are trying to survive on the street they encounter communities that are increasingly enacting and rigorously enforcing laws that define quality-of-life crimes. Moreover, many communities are adopting policies that lead people into violating local ordinances. For example, redesigning bus or subway seats so that it is not possible to lie down forces homeless people to sleep out in the open, where they may be arrested. Often the result is their arrest for an incident where others may just be encouraged to move on.

It is important to break this cycle of no-supports/arrest/incarceration/release-without-supports/arrest. When policies are adopted to accomplish this, everyone benefits—the homeless individuals, their families, the community and all taxpayers. A recent initiative in California to address the needs of homeless people with mental illnesses reduced total days of incarceration for those served from more than 60,000 days in the previous year to 11,609 since enrollment. A one-year investment of \$14.2 million produced an estimated savings of \$7.3 million, of which \$3.07 million was the result of reduced criminal justice system costs.⁸ This California program provides comprehensive services to help people move off the street and into housing, treatment and recovery, and incorporates initiatives to access appropriate federal benefits. The value of this approach is evident, both in the reduced economic and social costs of arrest and prosecution and in the positive outcomes for the individuals, their families and the community.

IMPACT ON RECIDIVISM AND QUALITY OF LIFE

A study conducted as part of the Vermont Mental Health Performance Indicator Project found a strong correlation between incarceration rates and utilization of public mental health services. Using data from 14 states, this study found that the states with the highest utilization rate had the lowest incarceration rate, and that lower mental health utilization rates in a state



accompanied increased rates of incarceration.⁹

Access to benefits can help adults and juveniles with serious mental disorders overcome many of the barriers they face as a result of having been arrested and incarcerated. In addition to the obvious problems of insufficient income to pay rent and buy food, clothing and other necessities, and no coverage for health and mental health care, including medication, these individuals face a range of other barriers. Incarceration can result in:

- denial of employment opportunities;
- ineligibility for subsidized housing;
- inability to finance further education;
- lack of access to public mental health services; and
- loss of custody of children.

Employment

Most states have legal prohibitions against employing people with a criminal history in certain jobs. Yet even when there are no legal barriers, employers can easily obtain an applicant’s criminal history and often refuse to hire people who have been convicted or—in jurisdictions that make arrest records public—have been arrested but not found guilty of any crime.

The problem may be compounded for people with serious mental disorders because of the stigma attached to mental illness. It can therefore be extremely difficult, even impossible, for someone with a serious mental disorder to secure a job after release from jail or prison.

Housing

Access to subsidized housing has increasingly become a challenge in the past two decades, as federal support for public housing, housing assistance and homeless programs has declined dramatically. Any criminal record may make landlords unwilling to rent a room or apartment to an individual or may lead to eviction from a current residence. Federal policy requires public housing authorities to deny access to anyone with a conviction for a crime, including a misdemeanor, that could affect the health, safety and welfare of other tenants. Some housing authorities have interpreted this to include conviction for disorderly conduct, harassment and misdemeanor drug possession. Moreover, an entire family may be denied housing or evicted based on a finding that one member of the household has been arrested or incarcerated.

Private landlords renting to individuals with federal Section 8 housing certificates also evict or refuse to admit tenants on the basis of criminal activity, including misdemeanor drug and other crimes.



If they are to overcome these substantial barriers, people with serious mental disorders need income supports. Often they also need access to a mental health case manager who can assist them in finding suitable housing.

Education

Both adults and juveniles with serious mental disorders will need to participate in education programs. Serious mental disorders frequently become disabling during the late teens or early twenties, leading to a break in education. Continuing education toward either a GED or a college degree is one of the most effective ways to offer a young adult an opportunity to succeed, and can directly contribute to recovery and rehabilitation. Youth who have had contact with the juvenile justice system need to continue their education as an important part of their rehabilitation.

Paying for continuation of schooling represents a formidable barrier. Federal law bars those with a prior conviction for possession or sale of controlled substances from obtaining either Pell grants or subsidized student loans. Many students are thus cut off from federal educational assistance, and few who have been incarcerated can afford the cost of higher education on their own.

Public Mental Health Services

Increasingly, access to public mental health services depends on having Medicaid coverage. Medicaid now pays for half of all public community mental health services; its share of the cost has increased rapidly and the trend is predicted to continue.¹⁰ As a result, it is increasingly hard for anyone without Medicaid coverage to gain access to the local public mental health system.

A recent survey of homeless people in San Francisco illustrates the problems. While 63% of respondents had tried to access mental health treatment, 31% of them never received any, and of those who were accepted, 24% received services for less than one month and another 25% for only two to six months. More than half (51%) reported negative experiences with the mental health system.¹¹

When contact with the criminal justice system is a factor, mental health programs typically avoid accepting the individual into care. With long waiting lists, most community programs select people they believe can benefit quickly from services and those who will not pose particularly challenging problems for the program or engage in behaviors that disturb other clients. Lack of Medicaid coverage is an easy justification for denying access to such services.

Child Custody Issues

Incarceration also breaks the bonds between parents and their children.



Often, child welfare agencies remove children from the custody of an incarcerated parent, particularly if the parent has a serious mental disorder. This is one more stressor for parents upon release. However, the ability to be quickly reinstated on benefits, such as TANF and Medicaid, may enable them to regain custody of their children.

FEDERAL PROGRAMS

A number of federal entitlement programs provide support for individuals with serious mental disorders who are exiting the criminal justice system. Together, these programs allow people to overcome the many barriers they face in re-establishing their lives following incarceration.

— Perhaps the most important of these is the **Supplemental Security Income** (SSI) program, providing income support to low-income individuals who are aged, blind or disabled. Individuals who qualify for SSI benefits are generally eligible automatically for Medicaid. To be eligible for SSI on the basis of disability, individuals must have a diagnosed disorder, such as mental illness. Adults must be so disabled that they cannot engage in “substantial gainful activity” by working in any job that is available in the national economy. Juveniles must have “marked and severe” functional limitations when compared with other children of the same age.

— Income support is also available to people with disabilities who have a sufficient prior work history under the **Social Security Disability Insurance** (SSDI) program. They are automatically eligible for Medicare health and mental health care benefits two years after they qualify for SSDI. Most people with serious mental disorders are on SSI (either alone or in combination with a small SSDI benefit) because they have a limited work history due to the severity of their illness and the young age at which they became disabled.

— **Medicaid** provides access to health and mental health treatment, including services to help maintain housing or a job or to continue education. Medicaid also funds case managers, who will assist the person in addressing problems of daily living. Medicaid is a means-tested program and to be eligible adults must meet other eligibility criteria as well.

— Veterans with a disability (including a psychiatric disability) are eligible for both **income support and health benefits through the Veterans’ Administration**. Income support is provided through two programs: Veterans Pensions Benefits (for those with a nonservice-connected disability) and Veterans Compensation (for those with a service-connected disability).



- Individuals who are caretakers of children may be eligible for both cash assistance and services through the **Temporary Assistance for Needy Families** program (TANF).
- Many individuals with serious mental disorders who have been incarcerated will also be eligible for **Food Stamps**.¹²

While the details of these federal benefit programs' rules differ as to payment of benefits to individuals who are arrested and held in jail or who are sentenced to jail or prison terms, a general pattern prevails. For the most part, benefits are stopped immediately or soon after the person becomes an inmate of a jail, prison, detention center or other facility *operated by* a criminal or juvenile justice agency. This rule does not apply to non-secure settings *connected with* the criminal or juvenile justice systems—for example, when individuals are on probation or parole—or when a court places a juvenile in a psychiatric residential treatment center for treatment.

Several programs have rules that vary to some degree from this general approach. The specific rules for each program are summarized below.¹³

— **SSI and SSDI cash payments** are generally lost when an individual is incarcerated. SSI benefits are suspended (rather than terminated) for up to 12 months, except for someone incarcerated less than a full calendar month, whose SSI benefit is not affected.

After 12 months of suspension, SSI benefits are terminated and the individual must apply again.

To restore suspended SSI benefits, the person must have been released from jail or prison and found to still meet the financial-eligibility requirements of the program. Benefits can be paid as soon as this is determined, and partial benefits are available for the month of release, based on the number of days left in the month. To restore SSI benefits that have been terminated, the individual must submit all the evidence required of a new applicant, including evidence of disability and information that shows financial eligibility.

SSDI benefits are suspended 30 days after incarceration but are reinstated after release, to begin only with the month *after* the month the individual was released. For both SSI and SSDI, reinstatement can take weeks.

— **Veterans** with service-connected disability income continue to receive benefits unless and until convicted of a felony and incarcerated for 60 days or more. Veterans with non-service-connected disability lose benefits if convicted of either a felony or a misdemeanor and incarcerated for 60 days or more. Veterans health benefits are not available while incarcerated, but are available to someone who is on probation, parole or work release or in a halfway house or state hospital.



- **TANF assistance** payments cease as soon as an individual is no longer a custodial parent—i.e., upon incarceration.
- **Food stamps** also are unavailable to incarcerated individuals.

PROBLEMATIC FEDERAL RULES

Several of these federal programs also have rules that create barriers to successful rehabilitation of some ex-offenders. Given the high rate of co-occurring substance abuse problems among people with serious mental disorders, rules relating to drug charges are particularly problematic. TANF, veterans benefits and food stamps all have prohibitions in federal law regarding access by individuals convicted of a felony relating to illegal drugs. Anyone with a drug felony conviction is barred for life from obtaining food stamps and TANF benefits, unless a state specifically modifies or eliminates this prohibition. To date, just over half the states have enacted legislation to either opt out of or narrow this ban.¹⁴

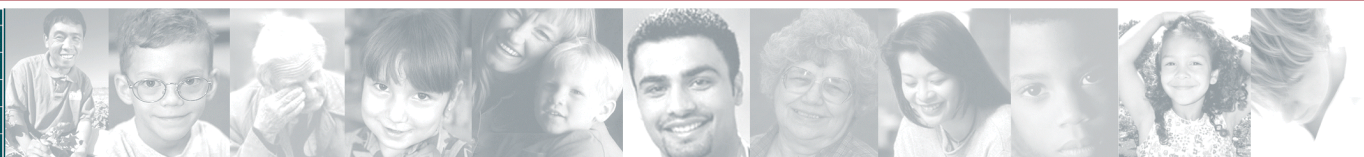
People who have outstanding warrants or who are in violation of probation or parole conditions are also ineligible for food stamps, SSI or TANF benefits. Individuals with serious mental disorders are often unaware that they fall into one of these categories.

Finally, some federal program rules work directly against the rules of the criminal justice system. The strict work requirements of TANF and the food stamp program may make it impossible for the person to meet the obligation to participate in mental health or drug treatment under the terms of his or her parole or probation.¹⁵

STATE FLEXIBILITY IN FEDERAL PROGRAMS

Many federal laws allow states to amend these onerous rules. Even when amendments are prohibited, however, states have flexibility in administering policies to assist ex-offenders in accessing key benefits. States can also use certain federal resources to provide services to aid inmates prior to their release. For example:

- States may suspend, rather than terminate, Medicaid benefits (and federal financial participation) for those who are incarcerated.
- States may adopt TANF rules that enable people with drug felonies to be eligible for benefits upon release, or they can modify the federal ban so it does not apply to anyone who is in, or has completed, an approved treatment program.



- States can adopt rules that make food stamps available to people with drug felonies upon release, or they can modify the federal ban so it does not apply to anyone who is in, or has completed, an approved treatment program.
- States can fund certain services (but not mental health treatment) for inmates who will be TANF-eligible upon release. These services can include:
 - case management;
 - vocational rehabilitation;
 - some mental health services (but not psychiatric) such as counseling, anger management and non-medical substance abuse treatment; and
 - literacy skills, job training or retraining, job search.

In addition to these state options, corrections facilities can enter into agreements with the Social Security Administration that enable quicker access to SSI, SSDI and food stamp benefits upon release.

RESTORING FEDERAL BENEFITS

The federal government has policies and procedures that can help jails and prisons address the issue of benefit access upon release. These rules recognize that without speedy access to various benefit programs, individuals may lose touch with the relevant social service agencies. For example, it typically takes weeks to be approved for Medicaid benefits, and qualifying for SSI and SSDI can take months or even years.

SSI and SSDI

The Social Security Administration (SSA) has established procedures enabling its local offices to provide support to public institutions, including jails, prisons and other corrections facilities, to help inmates submit applications while incarcerated. These applications can also cover food stamps. SSA will accept and process inmates' applications several months before their anticipated release and make a prospective determination of potential eligibility and payment amount, based on anticipated circumstances. Through this approach, benefits are payable as soon as feasible after— sometimes even on the day of—release.

A pre-release agreement between the corrections facility and SSA facilitates this process. However, inmates can also apply and have their applications handled expeditiously without such an agreement.

Pre-release agreements with SSA can be informal or formal and written. Both sides must make commitments. The correctional facility must agree to:



- C notify SSA of inmates who are likely to meet SSI eligibility criteria and who are expected to be released within 30 days after SSA is likely to make its eligibility decision;
- C designate a facility liaison to handle all referrals and to work with the local SSA office;
- C provide current medical evidence and non-medical information that may support the inmate's claim;
- C provide the anticipated release date; and
- C notify SSA if that date changes and when the inmate is actually released.

In return, SSA will:

- C train jail staff about SSI/SSDI rules and work with them to ensure that the application procedures work smoothly;
- C provide a contact person at Social Security to assist jail staff with the pre-release procedure;
- C process re-applications and new applications as quickly as possible; and
- C promptly notify the jail of the decision on the inmate's eligibility.

Upon release, SSA must verify the individual's living arrangement, make a final adjudication of the claim and initiate payment. This can be done expeditiously. These arrangements can often be facilitated with involvement by the federal SSA Regional Office and/or the state's Disability Determination Service, which makes the actual eligibility decision.

More information on SSA pre-release agreements is available on the SSA web site, at <http://policy.ssa.gov/poms>.¹⁶

Medicaid

Federal rules *do not* require termination of an inmate's Medicaid eligibility upon incarceration, although states are not precluded from suspending it, as long as the state ensures that no federal funds are used for services provided while the person is in a corrections facility. Inmates whose Medicaid has been suspended can be made eligible quickly upon release. However, a 1999 survey found that all states had a policy of terminating Medicaid eligibility upon incarceration.¹⁷

The federal government also requires that states not terminate anyone from Medicaid without first determining that the person cannot qualify under another Medicaid-eligibility rule. This means that individuals who had Medicaid eligibility when they were arrested must be reassessed and reinstated (if still eligible) as soon as they are released.¹⁸ And under federal Medicaid law, any



individual must be provided assistance in applying for benefits. Federal Medicaid matching funds are payable for the administrative cost incurred by state or local officials to determine whether an individual is eligible.

One situation where quick restoration of Medicaid eligibility is not within the purview of state or local officials is when the person qualifies for Medicaid through eligibility for SSI. In such cases, SSI must be restored first. If SSI has only been suspended, this should take no more than 14 days, but if it has been terminated the delay could stretch into months or years.

TANF

Local social services offices can restore TANF cash assistance as soon as a released individual can show that he or she has resumed the role of caregiver. Often, a person can complete a single application for Medicaid, TANF and food stamp benefits at these offices.

Food Stamps

Food stamp applications can be accepted by SSA at the same time that an individual files a claim for SSI benefits, provided that the person expects to live in a qualified household upon release. Other individuals may also apply for food stamps prior to their release.¹⁹ Although no action is taken on the application until the actual release, this can speed up the process. States are required to give prisoners an opportunity to receive food stamps as soon as possible but not later than 30 calendar days from the date they are released from the institution.

Veterans Benefits

The Veterans Administration (VA) requires written proof that the individual is no longer incarcerated in order to re-start benefits. This can be supplied to one of the 58 VA Regional Offices when requesting reinstatement.

RESTORING BENEFITS: STATE AND LOCAL INITIATIVES

Several states and communities have undertaken initiatives to facilitate access to federal benefits upon release. Jails and prisons can help inmates restore their benefits or apply for benefits to which they may be entitled but which for one reason or another they did not have upon incarceration. For example, correctional facilities can:

- screen inmates for potential eligibility for SSI, SSDI, Medicaid, TANF, veterans benefits or food stamps;
- have information and necessary forms available;



- learn the basic program rules to assist inmates;
- provide assistance to inmates in completing applications;
- work with local community mental health providers who know benefit issues; and
- work with the federal, state and local government agencies responsible for administering benefit programs.

Examples of initiatives to assist inmates with benefit issues are provided below.

Texas: Access to Social Security Benefits

The Texas Council on Offenders with Mental Impairments and the Texas Department of Criminal Justice entered into an interagency Memorandum of Understanding with the regional office of the Social Security Administration for a pilot pre-release project. This agreement allows Texas Council staff to submit federal benefit applications for SSI, SSDI and/or food stamps 90 days prior to an inmates’ release from custody.

Immediate access to SSI or SSDI benefits was recognized as potentially making the difference between successful and unsuccessful release to the community. Moreover, counties benefit by not having to cover the full cost of released offenders’ medical or psychiatric care because they can bill Medicaid for such services as medication, psychiatric rehabilitation, hospitalization or physician care.

The improved process for benefit access is part of a broader initiative for release planning and follow-up community care. The Texas Council has contracted with local mental health or human services agencies for staff to visit inmates six months prior to release, to engage in pre-release planning, help inmates access benefits and either provide follow-up care (when the inmate is released into the same community as the corrections facility) or arrange follow-up care in the inmate’s home community (for those sent to corrections facilities in other parts of the state).

Ninety days prior to release, all the paperwork for Social Security benefits is submitted to the local SSA office. The applications are processed, then sent on to a designated individual at the state Disability Determination Services (DDS) who makes the initial decision on eligibility. A high proportion of these claims are approved at this level (95% of medical claims and 60% of psychiatric disability claims). Inmates whose claims are turned down are assisted in filing an appeal.

For the system to work smoothly, it was found necessary to train the local SSA staff, who at first resisted the new process and did not understand SSA’s rules. These difficulties were overcome with training by the SSA regional office,



so that local office staff understood the goals of the program and the rules with respect to inmates. The human services benefit specialists have also undergone intensive 40-hour training by SSA on the rules regarding disability benefits and how to file a claim appropriately, with all necessary supporting documents.

Equally important was training of the human services staff who go into the prisons and jails. Leaders of this program report that human services staff need to deal with important issues and adjustments in order to function effectively in the correctional environments. Cross-training of human services and corrections staff has been helpful. Finally, it has been helpful for physicians at corrections facilities, who provide much of the supporting medical information, to be educated about the SSA process and particularly about what SSA considers to be a “disability,” so that they can provide the appropriate medical information and thus speed consideration of the claim.²⁰ The contracted mental health and human service agency staff continue to meet with Social Security staff on a regular basis to smooth out any ongoing issues.

Inmates who go through this process typically receive their disability checks very quickly upon release. The state provides a small stipend to released inmates, which is helpful until the check comes through. The release plan also addresses the need for housing; as a result, SSA can be given an address to which checks are to be mailed.

In Texas, award or reinstatement of SSI benefits automatically triggers Medicaid coverage. The applications to SSA for disability benefits also include an application for food stamps (see federal rules section above).

The pilot program handled applications from 1,114 inmates through 2000, of which 567 were completed and filed with SSA; 484 inmates had received a determination as of December 2000. Applications were not completed and filed by inmates released prior to completion, those who were ineligible due to alien status, those who died and 505 who declined to participate.

Additional information on this pilot is available through its web site: www.tdcj.state.tx.us/tcomi/tcomi-home.htm.

Albany, New York: Medicaid Coverage

Albany County Correctional Facility, with a daily census in 2000 of 719, is the state’s fifth largest jail. The needs of people with mental illnesses were not being met in the county and the jail saw the result: a revolving door into the criminal justice system as inmates were discharged with no resources only to decompensate and return time after time to jail. Moreover, jail officials were told by a state agency that “the problem is yours” and not a state responsibility.



Concerned about how to address the needs of this expanding population, four county representatives (from the jail, the office of public defender and the mental health authority) led efforts to form a local committee to address service issues for persons with co-occurring mental health and substance abuse disorders. Named the Options Committee, the group has grown to 20 members, most of them department heads,²¹ and continues to meet monthly. Its mission includes managing the integration of existing health, mental health, substance abuse and social service systems to match client needs with available services. It strives to improve client outcomes related to self-sufficiency and to reduce recidivism.

As a result of the Options Committee's work, various programs and services have been implemented, including improvements in mental health services in the jail and opportunities for pre-trial diversion. The committee has had a powerful effect on many issues, including the improvement of discharge planning for inmates with mental illnesses.

Initially, the Options Committee found that community-based providers did not want to come into the facility to screen inmates because no insurance would pay for the service. The Options Committee challenged the County Office of Social Services (the Medicaid agency) to remedy this. As a result:

- Guidelines were established for all inmates with a known date of discharge.
- County social services staff come into the jail 45 days before an inmate's release.
- The inmate is assisted in completing an application for Medicaid benefits, which is filed 45 days prior to the anticipated date of release.
- The application is registered and logged and held so it can be activated once the inmate is released.
- Upon release, the inmate must go to the Social Services office with certain information, including proof of identify, release papers, verification of financial eligibility (assets and income) and verification of residence in Albany County.
- The Social Services office not only processes the Medicaid application but also assists the released individual with other needs, such as job search, general assistance payments, food stamps and access to other programs.
- The individual's application is generally finalized upon a second visit to this office, within two or three days.
- The jail provides sufficient medication to cover inmates' needs until their Medicaid and other benefits can be obtained.

As a result of the Options Committee's efforts, community mental health providers are now willing to work with people being released from the jail.



Rensselaer County, New York: Medicaid

In Rensselaer County, a New York Forensic Task Force has been established with representatives from the jail, courts, district attorney, defense, parole, probation and police, and from mental health, substance abuse, health, education, housing and shelters, along with consumers and the county executive office. This task force recognized the need to reduce the delay in accessing benefits upon release. Task force members therefore met and negotiated an agreement with the head of the county’s Medicaid agency. As a result, many applicants now receive Medicaid benefits within 24 hours of release. Under this agreement:

- Department of Social Services (DSS) staff provide public assistance applications and training to jail staff so they can help inmates complete their applications and collect the necessary supporting documentation, such as birth certificate, pay stubs and identification.
- Applications are completed prior to release and filed with the social services agency, where they are reviewed and, if approved, returned to the inmate, who can then take the approved application to social services upon release, speeding up the process.
- If the need for action is urgent, jail staff or a case manager can get an appointment and bring the former inmate to the social services office for immediate temporary assistance beginning on the day of release. In this case, DSS accepts a jail booking sheet and jail photo identification. Within 10 days, the former inmate must provide the proper documentation in order to apply for ongoing Medicaid benefits.

This effort has been facilitated by co-locating a probation officer in jail and providing transportation to community-based providers after release.

New York State: Access to Medications

New York State has a Medication Grant Program administered by the Office of Mental Health that will pay for psychiatric medications for people leaving jail or prison, provided the individual applies for Medicaid prior to or within seven days of release. Grants are made to counties to enable them to pay for medications. The Office of Mental Health also pays for transition managers, or pre-release coordinators, in certain local jails, who help develop an inmate’s application. The local mental health agency then works with Medicaid to finalize the application. Upon release, the individual is given a temporary Medicaid card to cover medication costs while the full Medicaid application is being processed.

Lane County, Oregon: Access to Medicaid Upon Incarceration and Release²²



Oregon Medicaid operates under a federal (Section 1115) waiver and the state Medicaid agency has an incarceration disenrollment policy, stating that individuals will not be disenrolled from Medicaid until the 15th day of their incarceration. Thus, inmates released within 14 days retain their eligibility and can access Medicaid-covered services immediately. Medical costs incurred during the first 14 days of incarceration are paid by the Medicaid managed care plan, which in Oregon is the county mental health authority. No specific federal financial participation is claimed for any inmate’s mental health care.

In addition, through an agreement between a county and the local Medicaid office, the application/re-application process can begin while the individual is still in custody. This applies both for those who did not have benefits upon arrest and inmates whose Medicaid was terminated because they were incarcerated longer than 14 days. Jail staff help inmates fill out Medicaid applications and fax them to the Medicaid office prior to release. Medicaid puts the applications on a fast track for processing and most are processed in a day or two. Temporary Medicaid cards are then faxed back to the jail, ensuring that inmates have immediate access to Medicaid services upon release.

STRATEGIES

Advocacy is necessary to achieve the changes to state law, state and local regulation, policies and procedures to accomplish the goals of programs such as those described in this report. Strategies suggested at the GAINS conference symposium included the following:

- **Present such changes appropriately.** Public and policy-makers have negative views about prisoners. However, initiatives to secure benefits for inmates as soon as they are released have a significant impact on crime prevention and reduction of recidivism. While mental health advocates will welcome such changes because of their impact on the individuals’ lives, many policymakers may respond more to issues of public safety.
- **Enlist corrections officials as allies for reform efforts.** Once they understand how this will help them manage people with serious mental disorders in their facilities, corrections officials can become important partners. Reducing recidivism among this group—currently high—can diminish the need for suicide watches and avoid incidents (including successful suicide) that are very traumatic for corrections officers.
- **Identify (or become) a champion for such changes** in the community.
- **Use data effectively.** Data can be extremely compelling. Statistics that are relatively easily compiled include the number of adults and juveniles with



serious mental disorders in state or local corrections facilities (if specific numbers are unavailable, it is reasonable to apply national percentages to jail or prison populations), the cost of jail days and the added cost of handling individuals with mental illnesses (suicide watch, mental health unit, staff time to deal with problems that arise when within the general population, etc.).

— **Support efforts by legislators who take an interest in this issue and begin to raise it.** Support is most helpful when it comes from those within the criminal justice system, but advocates for people with mental illnesses can also make clear the need for such changes.

— **Create 3" x 5" cards with key messages** to give to legislators and supporters of change. With such cards, every advocate will be able to present a succinct and consistent message.

For state legislators or state policymakers interested in putting in place state rules that comport with federal law and lead to improved access to benefits and supports upon release, the Bazelon Center has developed A Model Act to Reduce Recidivism by Improving Access to Benefits for Individuals with Psychiatric Disabilities Released from Incarceration.²³ The goal of this model law is both to facilitate the community reintegration of adults and juveniles with psychiatric disabilities upon release from correctional facilities and to enhance public safety and provide cost-effective care. It addresses the policy issues that today prevent such individuals from receiving benefits speedily upon release from incarceration by directing the relevant state and local agencies to adopt specific policies and procedures so that individuals with psychiatric disabilities can:

- remain enrolled, to the degree federal law permits, in federal health insurance and income support programs while incarcerated;
- be speedily reinstated or enrolled, if eligible, upon release;
- obtain temporary health care coverage and income support upon release while receipt of federal benefits is pending;
- receive mental health and substance abuse services shortly before and upon release, including case management and medication.

The model law, if enacted, would accomplish this by establishing policies and procedures that fully comply with the complex federal rules for state Medicaid and social services agencies, state and local correctional agencies and facilities, mental health authorities and mental health providers.

The Bazelon Center's model benefits law can be accessed through the center's web site: www.bazelon.org.

CONCLUSION



According to a landmark consensus report from the Council of State Governments (CSG), it is important to “streamline administrative procedures to ensure that federal and state benefits are reinstated immediately after a person with mental illness is released from jail.”²⁴ The CSG consensus report recommends that states suspend Medicaid benefits, as opposed to terminating them, commence discharge planning at the time of booking and continue the process throughout the period of detention, and develop a process to ensure that inmates who are eligible for public benefits receive them immediately upon their release.

In addition to being a humane and a cost-effective approach, helping individuals with serious mental disorders to access their benefits upon release can be part of a more comprehensive state approach to support community integration. Under the Supreme Court’s ruling in *L.C. v. Olmstead*, states must avail themselves of all resources that can be used to support an individual with a disability living in the community. Failure to assist people being released from jail or prison in quickly accessing federal Medicaid, disability and other benefits to which they are legally entitled undermines a state’s ability to achieve the community integration mandate of the Supreme Court’s ruling in *Olmstead*.

Adjusting state and local policies and procedures to ensure immediate access for released inmates with serious mental disorders to the benefits and services to which they are entitled will greatly improve the prospects of many adults and juveniles with serious mental disorders for a successful, productive, crime-free and independent life in the community. By definition, this will result in safer communities and reduced public expense for the incarceration of people with serious mental disorders.



ATTACHMENT 1

**Expanding Access to Community-Based Services
for People with Co-Occurring Disorders
in Contact with the Criminal Justice System:
The National GAINS Center 2002 Conference**

Symposium on Protecting Individuals' Rights to Federal Benefits

PRESENTERS

Chris Koyanagi, Policy Director
Bazelon Center for Mental Health Law
1101 15th Street N.W., #1212
Washington, D.C. 20005
202/467-5730 ext. 118

Collie Brown, Director
Training & Technical Assistance
Research & Evaluation Associates, Inc.
6820 Quadrangle Drive, Suite 180
Chapel Hill, NC 27517
919/493- 1661, ext. 231
cbrown@rea-ch.com

Edward W. Szostak, President
Szostak & Associates
89 Latham Ridge Road
Latham, New York 12110-3028
518/783-1641
katsozse@aol.com
(Formerly Superintendent of
Albany County Correctional Facility in Albany, NY)

Paul Bodin, Executive Director
San Francisco Coalition for the Homeless
San Francisco, California



NOTES

1. Based on admission rates reported in Bureau of Justice Statistics Bulletin, *Census of Jails, 1999* (August 2001, NCJ 186633, p. 5) multiplied by the percentage of jail inmates with a mental illness (16.3%) reported in Bureau of Justice Statistics Special Report, *Mental Health Treatment of Inmates and Probationers* (July 1999, NCJ 174463).
2. Bureau of Justice Statistics Special Report, *Mental Health Treatment of Inmates and Probationers* (NCJ 174463).
3. *Id.*
4. Coccozza, Joseph. J., & Skowrya, Kathleen R. Youth with Mental Health Disorders: Issues and Emerging Responses. (April, 2000). *Juvenile Justice*, Volume VII(1). Washington DC: Office of Juvenile Justice & Delinquency Prevention.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Integrated Services Reduce Recidivism Among Homeless Adults with Serious Mental Illness in California*. Fact sheet from the National GAINS Center, Delmar, NY, and available at www.gainsctr.com.
9. Data from the Vermont Mental Health Performance Indicator Project of the State Department of Developmental and Mental Health Services, Waterbury, VT. See www.state.vt.us/dmh/Data/PIPs/
10. Buck, J.A. (2001). Spending for State Mental Health Care. *Psychiatric Services* 52(10): 1294; and Buck, Jeffrey A., *Medicaid and Mental Health Services: Beliefs and Reality*. (May 5, 2002). Presentation at National Association of State Mental Health Advisory Councils meeting, Orlando, Florida.
11. *Locked Out: The Voices of Homeless People with Mental Illnesses*. (June 10, 1999) San Francisco: Coalition on Homelessness.
12. For more information on food stamp benefits see Rosen, Jeremy, Hoey, Rebecca and Steed, Theresa, Food Stamp and SSI Benefits: Removing Access Barriers for Homeless People. (March-April, 2001) *Clearinghouse Review Journal of Poverty Law and Policy*. 679-696.
13. For further information on the SSI, SSDI, Medicaid and Medicare rules for adults with mental illnesses who are incarcerated, see *Finding the Key*, Washington, DC: Bazelon Center for Mental Health Law at www.bazelon.org.
14. Rubenstein, Gwen. (2001). *Getting to Work: How TANF Can Support Ex-Offender Parents in the Transition to Self-Sufficiency*. Washington, DC: Legal Action Center.
15. Rubenstein, Gwen. (2001). *Getting to Work: How TANF Can Support Ex-Offender Parents in the Transition to Self-Sufficiency*. Washington, DC: Legal Action Center.
16. In particular, the following documents are useful: SI 00520.900 - Prerelease Procedure for the Institutionalized (provides an overview); SI 00520.910 Prerelease Agreements - Institutionalization (describes responsibilities of correctional facility and the SSA); SI 00520.920 - Processing PreReleases Cases (describes SSA procedures) and SI 00520.930 - Exhibits (includes a model PreRelease



Agreement).

17. Cindy Lackey, Senior Policy Analyst, Council of State Governments *Final Results of State Medicaid Agencies Survey* in memorandum to Fred Osher, Director of Center for Behavioral Health, Justice and Public Safety. (October 16, 2000). New York, NY: Council of State Governments.

18. According to a letter dated April 6, 2000 from then-Secretary of the Department of Health and Human Services, Donna E. Shalaja, to Congressman Charles Rangel, states “must ensure that the incarcerated individual is returned to the rolls immediately upon release, unless the State has determined that the individual is no longer eligible for some other reason.” This federal policy was confirmed in a letter dated October 1, 2001 from Health and Human Services Secretary Tommy Thompson, again written to Congressman Charles Rangel.

19. See 7 CFR 273.2(g)(1) regarding opportunity to participate in food stamp prior to release. This policy was also confirmed December 20, 2002, by Patricia Maggi, Certification Policy Branch, Food Stamp Program, U.S. Department of Agriculture in an email message to the Bazelon Center for Mental Health Law.

20. For juveniles, see *Guidelines for Reviewing SSI Disability Benefits for Children and Adolescents with Mental Disorders*, (September 1997) American Academy for Child and Adolescent Psychiatrists, Washington, D.C. www.aacap.org. For adults, see *SSA Issues New Rules Governing Mental Impairment Claims* (October 1985), Clearinghouse Review, pp. 715723. For a print copy, send request with a self-addressed envelope (6" x 9" or larger with \$.60 postage) to Publications, Bazelon Center, 1101 15th Street NW, Suite 1212, Washington DC 20005.

21. Members of the Options Committee include representatives from the sheriff’s department, the County Executive office, departments of health, mental health, probation and social services, office of the public defender and state division of parole.

22. Material in this section from the National GAINS Center for People with Co-Occurring Disorders in the Justice System: *Maintaining Medicaid Benefits for Jail Detainees with Co-Occurring Mental Health and Substance Use Disorders*. Spring 2002.

23. Available on the Bazelon Center’s website, www.bazelon.org.

24. Council of State Governments, *Criminal Justice/Mental Health Consensus Project* (June, 2002). New York: Council of State Governments. Available www.consensusproject.org.

